

Date: 11 February 2000

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CC: Representative Tom DeLay
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Senator Kay Bailey Hutchison
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Re: Comment on Rulemaking on Exemptions from Prohibition on
Circumvention of Technological Measures that Control Access
to Copyrighted Works
(Federal Register, Vol. 64, No. 226, 24 Nov 1999, p. 66139;
<http://www.loc.gov/copyright/1201/anticirc.html>)

I am a computer user who uses the Linux operating system. At the present time, there is no commercially available support from vendors of Digital Versatile Disk (DVD) products for the viewing of content on DVD disks on computers running the Linux operating system.

Within the last year, software ("DeCSS") has been developed by non-commercial developers which would enable me to view content on DVD disks that I own, on my Linux computer. These developers have subsequently been attacked by copyright owners (the Motion Picture Association of America, et. al.) who claim that this software would enable the illegal copying of copyrighted works on DVD disks.

The DeCSS software does circumvent access control technologies developed by copyright owners to control access to copyrighted works on DVD disks. However, the intent of this circumvention is to enable normal, noninfringing use of the copyrighted work by individuals who

already possess a legitimate right to view the work by having purchased a copy of it on DVD disk.

The prohibition of circumvention in the Digital Millennium Copyright Act should not be used to criminalize circumvention when circumvention is performed for the purpose of noninfringing use by a person who has purchased a legal copy of a copyrighted work.

Exemption from prohibition of circumvention should be made for the purpose of allowing normal, noninfringing use. Further, exemption should be made for any and all classes of works which are protected by access control technologies, not just DVD.

However, this is not enough.

Even more significantly than the prohibition on circumvention, the DMCA also prohibits the publication ("offering to the public") of software instructions (source code) which would assist someone in performing circumvention.

First, this prohibition on publication would tend to inhibit individuals from performing legitimate circumvention to enable normal, noninfringing use of copyrighted works which they have legally purchased.

Second, this prohibition on publication stands by itself as a breach of the freedom of speech and of the press guaranteed by the First Amendment to the United States Constitution.

Making illegal copies of copyrighted works is a crime. Instructing someone on how to circumvent access controls so that they might view their own legally purchased copy of a copyrighted work should not be a crime.

The prohibition on publication of circumvention information, as it stands, is a violation of First Amendment protections, and must be abolished.

-Anthony Garcia